

**LEGISLATIVE SERVICES AGENCY
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FISCAL IMPACT STATEMENT

LS 6669

BILL NUMBER: HB 1129

NOTE PREPARED: Jan 25, 2008

BILL AMENDED: Jan 24, 2008

SUBJECT: Archeology.

FIRST AUTHOR: Rep. Pierce

FIRST SPONSOR:

BILL STATUS: CR Adopted - 1st House

FUNDS AFFECTED: X GENERAL
X DEDICATED
FEDERAL

IMPACT: State & Local

Summary of Legislation: (Amended) *Definition of Artifact*. The bill defines "artifact" and changes the date used in determining whether an object or feature is an artifact.

Disturbing Burial Ground. It redefines "burial ground" to include certain historic sites. It requires a person disturbing ground to use reasonable care and diligence to determine if the ground that may be disturbed is within 100 feet of a cemetery or burial ground. It requires a person who disturbs buried human remains or artifacts to cease disturbing the remains or artifacts and the surrounding area within 100 feet. Failure to do so constitutes a Class A infraction. The bill establishes other criminal penalties for certain actions that disturb human remains.

Notice of a Discovered Artifact or Burial Object. The bill requires the Department of Natural Resources (DNR) to respond within 10 business days after receiving notice of a discovered artifact or burial object.

Development Plans. The bill redefines "plan" to include a plan for excavation of ground related to construction. It establishes certain requirements for development plans and archeological plans.

Confidential Historical or Archeological Sites. It makes reports concerning the location of historical or archeological sites confidential under some circumstances.

Determination of a Violation. The bill allows certain persons to accompany a conservation officer to investigate a violation of historic preservation and archeology law.

Exemption for Professional Archeologists. The bill exempts qualified professional archeologists who conduct

Phase 1a archeological surveys from certain archeological restrictions.

Program to Assist Homeowners. It establishes a fund to assist private homeowners who accidentally discover an artifact, a burial object, or human remains and need assistance to comply with an approved archeological or development plan.

Appropriation. The bill annually appropriates money in the Archeology Preservation Trust Fund.

Penalty Provisions. The bill makes it a Class D felony to possess looted property and a Class C felony if the cost of carrying out an archeological investigation on the site that was damaged to obtain the looted property is more than \$100,000. The bill allows a court to order restitution for certain costs related to the violation of historic preservation and archeology law.

Miscellaneous. It provides that a disinterment under a plan approved by the Department of Natural Resources is exempt from other disinterment procedures. It also makes conforming changes.

Effective Date: July 1, 2008.

Explanation of State Expenditures: *Definition of Artifact.* The bill redefines the definition of artifact which may expand features and objects that would fall under the DNR jurisdiction. The DNR should be able to cover any additional costs associated with this provision given its existing level of budget and resources.

Disturbing Burial Ground. The bill redefines "burial ground" to include certain historic sites and modifies what constitutes disturbing the grounds. Additionally, the bill modifies requirements that a person who disturbs the ground must do. These provisions could result in administrative expenses for the DNR; however, the DNR will be able to implement the provisions given its existing resources.

Notice of a Discovered Artifact or Burial Object. The bill requires the DNR to respond within 10 business days after receiving notice of a discovered artifact or burial object. This provision could increase administrative expenses for the DNR. The DNR should be able to implement this provision given its existing level of budget and resources.

Confidential Historical or Archeological Sites. The proposal provides that the DNR Division of Historic Preservation and Archeology may keep certain reports and information concerning the location of historic and archeological sites confidential. These provisions could increase administrative expenses for the DNR. The DNR should be able to cover any additional expense given its existing level of budget and resources.

Determination of a Violation. The proposal provides that an employee of the Division of Historic Preservation and Archeology or a person authorized by the DNR may accompany a conservation officer on public or private property to determine if there is a violation. This provision could increase expenses to the DNR; however, the DNR will be able to cover any additional expense given its existing level of budget and resources or through the reallocation of current resources.

Program to Assist Homeowners. The division may conduct a program to assist private homeowners who have accidentally discovered an artifact, a burial object, or human remains and who need assistance to comply with an approved plan to excavate or secure the site from further disturbance. The provision may increase expenses for the DNR. The DNR could cover expenses through the use of the trust fund if revenue was collected for the fund. In addition to possible court-ordered restitution that could be deposited in the fund,

the bill provides that the DNR may receive gifts and grants for the program.

Appropriation. The Auditor of State must establish the Archeology Preservation Trust Fund for purposes of holding money received for the program to assist homeowners. The DNR must administer the fund. Expenses of administering the fund must be paid from money in the fund. The Treasurer of State must deposit in the fund the interest that accrues from the investment of the trust fund. Money in the trust fund at the end of a state fiscal year does not revert to the state General Fund. There is annually appropriated to the DNR money in the trust fund. The division may adopt rules to govern the administration of the fund program.

Penalty Provisions–Restitution. The bill provides that a court may order an individual to make restitution to the trust fund for the DNR's cost necessitated because of the offense committed by the individual.

Penalty Provisions. Certain violators commit a Class D felony or a Class C felony. A Class D felony is punishable by a prison term ranging from 6 months to 3 years or reduction to Class A misdemeanor depending upon mitigating and aggravating circumstances. A Class C felony is punishable by a prison term ranging from 2 to 8 years. Assuming offenders can be housed in existing facilities with no additional staff, the marginal cost for medical care, food, and clothing is approximately \$1,825 annually, or \$5 daily, per prisoner. However, any additional expenditures are likely to be small. The average length of stay in Department of Correction (DOC) facilities for all Class D felony offenders is approximately 10 months. The average length of stay for all Class C felony offenders is approximately 2 years.

Explanation of State Revenues: *Penalty Provisions–Restitution.* The bill provides that a court may order an individual to make restitution to the trust fund for the DNR's cost necessitated because of the offense committed by the individual.

Penalty Provisions. If additional court cases occur and fines are collected, revenue to both the Common School Fund (from criminal fines) and the state General Fund (from court fees) would increase. The maximum fine for a Class D felony or a Class C felony is \$10,000. The maximum judgment for a Class A infraction is \$10,000, which would be deposited in the state General Fund. However, any additional revenues would likely be small.

Explanation of Local Expenditures: *Disturbing Burial Ground.* The proposal could reduce local expenditures to the extent that local units would have access to documentation from the state indicating that a burial ground was or was not within 100 feet of a land disturbance. Local units would not need to make their own determinations.

Penalty Provisions. A Class A misdemeanor is punishable by up to one year in jail. If more defendants are detained in county jails prior to their court hearings, local expenditures for jail operations may increase. However, any additional expenditures would likely be small.

Explanation of Local Revenues: *Penalty Provisions.* If additional court actions are filed and a judgment is entered, local governments would receive revenue from court fees. If additional court actions occur and a guilty verdict is entered, local governments would receive revenue from court fees. However, the amounts would likely be small.

State Agencies Affected: DNR, Department of Correction.

Local Agencies Affected: Trial courts, local law enforcement agencies.

Information Sources: Indiana Sheriffs' Association, Department of Correction.

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